

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

PHALANZA S. FRANCISCO

PLAINTIFF

v.

Case No. 4:19-cv-04058

COOPER TIRE & RUBBER COMPANY

DEFENDANT

ORDER

Before the Court is Plaintiff's Motion for Entry of Second Amended Final Scheduling Order (ECF No. 46). Defendant has filed a response. (ECF No. 48). Plaintiff has filed a reply. (ECF No. 49). The Court finds this matter ripe for consideration.

On November 18, 2020, both parties attended a settlement conference with this Court, but were unable to reach an agreement. On November 22, 2020, the deadline for completion of discovery expired. On December 15, 2020, Defense Counsel emailed Plaintiff's Counsel with a proposed joint motion to continue trial. On January 22, 2021, Defendant filed its Motion for Summary Judgment. On February 2, 2021, Plaintiff's Counsel emailed Defense Counsel renewing his request to depose two individuals. On February 5, 2021, Plaintiff filed the present motion asking the Court to issue a Second Amended Scheduling Order and extend the discovery deadline in order for Plaintiff to depose two additional witnesses. On February 25, 2021, Plaintiff's Counsel emailed Defense Counsel explaining that his lack of response to Defense Counsel's December emails was due to being quarantined because a COVID-19 exposure.

Plaintiff argues that two depositions were deferred until the parties attended the settlement conference. Plaintiff states that once Defendant filed its Motion for Summary Judgment, Defense Counsel became disagreeable to Plaintiff's request for the additional depositions. Plaintiff also argues that Federal Rule of Procedure 56 authorizes the Court to allow depositions to be taken in

order to adequately respond to a pending motion for summary judgment. Additionally, Plaintiff cites to difficulties relating to COVID-19 as reason for being unable to complete discovery.

Defendant argues that Defense Counsel attempted to email Plaintiff's Counsel regarding the proposed Second Amended Final Scheduling Order, but his emails went unanswered. Thus, Defendant filed his Motion for Summary Judgment because he had not received any response from Plaintiff's Counsel. Defendant adds that Plaintiff was not deprived of a fair chance to depose witnesses in this case and Defendant would be prejudiced by entry of a Second Amended Scheduling Order.

Federal Rule of Procedure 56(d) states:

If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

- (1) defer considering the motion or deny it;
- (2) allow time to obtain affidavits or declarations or to take discovery; or
- (3) issue any other appropriate order.

FRCP 56(d).

In the present motion, Plaintiff states that two depositions are needed to adequately respond to Defendant's Motion for Summary Judgment. It appears that both parties agreed to delay depositions until after the Settlement Conference. (ECF No. 46-3). After the settlement conference, Plaintiff's counsel emailed Defense Counsel requesting to depose a witness. (ECF No. 46-4). Neither party has shown that Defense Counsel responded to this request before the close of discovery. After the close of discovery, both parties appear to have agreed on a Second Amended Scheduling Order, but this was not submitted to the Court.

Upon consideration, the Court finds that Plaintiff has shown good cause for his need to depose additional witnesses to adequately respond to Defendant's Motion for Summary Judgment. Accordingly, the present motion (ECF No. 46) should be and hereby is **GRANTED**. The discovery

deadline is extended an additional thirty (30) days to **April 11, 2021**. This extension provides sufficient time to depose any additional witnesses. The Court acknowledges it's previous Order granting Plaintiff's Motion for Extension of Time to Respond to Defendant's Motion for Summary Judgment (ECF No. 47) and amends that Order to provide Plaintiff with **twenty-one (21) days** to file his response to Defendant's Motion for Summary Judgment after the close of discovery on April 11, 2021.

IT IS SO ORDERED, this 12th day of March, 2021.

/s/ Susan O. Hickey
Susan O. Hickey
Chief United States District Judge